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Environment Support Group® – Trust

1572, 36th Cross, 100 Feet Ring Road,
Banashankari II Stage,
Bangalore 560070. INDIA
Tel: 91-80-26713559-3561
Voice/Fax: 91-80-26713316
Email: esg@esgindia.org
Web: www.esgindia.org

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Karnataka abandons obligation to prosecute violators of Biological Diversity Act

Illegal resolution of Karnataka State Biodiversity Board aimed at sheltering Monsanto/Mahyco from charges of biopiracy in advancing Bt. Brinjal – India's first GMO

In a shocking development, the Karnataka State Biodiversity Board has resolved in its 19th meeting held on 20th January 2012 that it will not prosecute institutions and companies who violate the Biological Diversity Act.

This highly controversial and illegal decision was taken in the context of reviewing ESG's complaint of biopiracy against US MNC M/s Monsanto and its Indian subsidiary M/s Mahyco who along with their collaborators (University of Agricultural Sciences, Dharwar; Tamilnadu Agricultural University, Coimbatore; Indian Institute of Vegetable Research, Lucknow; Sathguru Foundation, Hyderabad; United States Agency for International Development and Cornell University, New York) wilfully violated the provisions of the Biological Diversity Act by illegally accessing 12 varieties of brinjal endemic to India and genetically modifying it, resulting in a patented product – B.t. Brinjal. This constitutes biopiracy, a criminal violation punishable with prison sentences.

The resolution passed by the Board is as follows:

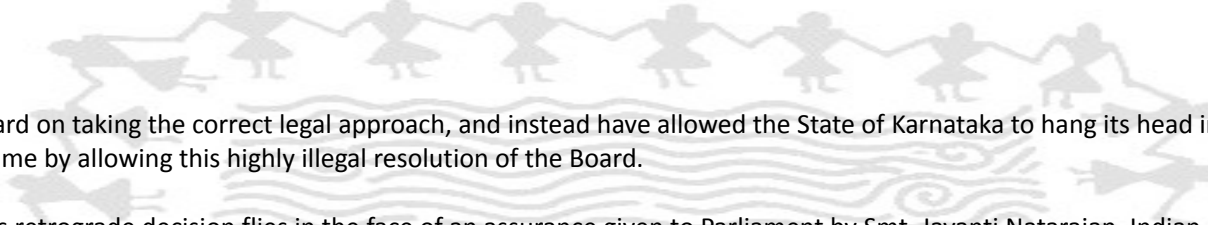
“The subject was deliberated and it was clarified that the subject comes under the purview of the National Biodiversity Authority. Therefore, it was resolved that **it is for the National Biodiversity Authority to take necessary action at their end against institutions/companies regarding alleged violations of provisions under Biodiversity Act 2002.**” (Emphasis supplied)

Notifications issued by the Ministry of Environment and Forests per Section 61 of the Biodiversity Act infact empowers any officer of the rank of Range Forest Officer (operating under State law jurisdiction) and above to take cognisance of violations and initiate prosecution. The resolution of the Board is thus tantamount to absolute abandonment of the obligatory function to prosecute violators of the Biodiversity Act.

ESG has challenged this decisions in a representation to Mr. Palemar, demanding that the resolution must immediately be reversed by calling an emergency meeting of the Board. A copy of this representation is enclosed.

There is little doubt that this controversial resolution was passed to unhook Monsanto and its collaborators from biopiracy charges. It is tenable to draw such a conclusion as the current action agitates against the consistent position held by the Board that ESG's complaint of biopiracy has merit and action must be initiated against the violators per the advise of the National Biodiversity Authority. Karnataka's Environment Minister Mr. Krishna Palemar who has presided as Chairperson of the Board over the past two years, has never found it necessary to interfere with the ongoing investigation.

However, the Minister seems to allowed this reversal in a meeting that saw the first appearance of Mr. Kaushik Mukherjee, IAS, Addl. Chief Secretary and Head of Dept. Of Forests, Ecology and Environment of the Government of Karnataka and Mr. Avani Kumar Varma, IFS, Principal Chief Conservator of Forests, Karnataka. While Mr. Mukherjee by his position acts as a custodian of Karnataka's biodiversity with absolute responsibility for appropriate implementation of the Biodiversity Act, Mr. Varma has all the powers of prosecution as the entire Forest force, including Range Forest Officers and senior officers who have the power to prosecute violators of Biodiversity Act, act exclusively under his orders. It appears both senior officials preferred to not advise the



Board on taking the correct legal approach, and instead have allowed the State of Karnataka to hang its head in shame by allowing this highly illegal resolution of the Board.

This retrograde decision flies in the face of an assurance given to Parliament by Smt. Jayanti Natarajan, Indian Minister of State for Environment and Forests (i/c), as recently as on 28 September 2011. The Minister had stated that **“(b)ased on preliminary information placed before it, the National Biodiversity Authority has recommended in principle to initiate legal action against alleged violators for violation of various provisions of the Biological Diversity Act, 2002”**. The Minister had also submitted that **“National Biodiversity Authority received a complaint from Environment Support Group (ESG), Bangalore alleging biopiracy by M/s Monsanto/ Mahyco and its collaborators in the development of Bt. Brinjal. Based on this, the Authority with the help of Karnataka State Biodiversity Board began investigating this allegation**. Information and inputs from those institutions and agencies involved in the development of the said Bt. Brinjal material were procured and legal assessment of this information was undertaken considering the elements and extent of violation of the provisions of the Biological Diversity Act. Further, more information was sought from the agencies involved in the development of this material and **action will be taken appropriately.**” (Emphasis supplied)

While the fact remains that National Biodiversity Authority is still duty bound to initiate prosecution on the basis of ESG's complaint, the sticking issue remains that Karnataka has voluntarily surrendered its powers of prosecution merely to shelter Monsanto/Mahyco and their collaborators. This is more than likely to encourage more cases of biopiracy by corporates and thus seriously compromise biodiversity heritage and the food and social security that it extends to millions. Further, it will allow the loot of our natural wealth for maximising corporate profits by agricultural, biotech and pharmaceutical companies, while irreversibly jeopardising the economic and ecological security of present and future generations.

India will host the 11th Conference of Parties of the Convention on Biological Diversity in October at Hyderabad this year. This is an opportunity to showcase the best intent of regulatory agencies in implementing biodiversity protection laws. In this context it is absolutely essential now for the Board to reverse its resolution, and do so in right earnest. This would help the Board showcase on a global stage Karnataka's rich tradition of conserving biodiversity, and without any blemish.

Leo F. Saldanha
Coordinator/Trustee

Bhargavi S. Rao
Coordinator (Education)/Trustee
Environment Support Group

Encl.: As above